

1 BILAL A. ESSAYLI
United States Attorney
2 LINDSEY GREER DOTSON
Assistant United States Attorney
3 Chief, Criminal Division
RAHUL R.A. HARI (Cal. Bar No. 313528)
4 NEIL P. THAKOR (Cal. Bar No. 308743)
Assistant United States Attorneys
5 General Crimes Section
1200 United States Courthouse
6 312 North Spring Street
Los Angeles, California 90012
7 Telephone: (213) 894-6159/6595
E-mail: Rahul.Hari@usdoj.gov
8 Neil.Thakor@usdoj.gov

9 Attorneys for Plaintiff
UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MAKSIM ZAITSEV,

16 Defendant.

No. 2:25-cr-00154-SPG

GOVERNMENT'S OPPOSITION TO MOTION
IN LIMINE #1 TO EXCLUDE EXPERT
TESTIMONY OF DR. STEVEN SHIN

Trial Date: 5/20/2025
Location: Courtroom of the
Hon. Sherilyn Peace
Garnett

17
18
19
20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorneys Rahul R.A. Hari and
23 Neil P. Thakor, hereby files its opposition to defendant's motion in
24 limine #1 to exclude the expert testimony of Dr. Steven Shin.

25 //

26 //

27

28

1 This opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4
5 Dated: April 30, 2025

Respectfully submitted,

6 BILAL A. ESSAYLI
7 United States Attorney

8 LINDSEY GREER DOTSON
9 Assistant United States Attorney
 Chief, Criminal Division

10 /s/

11 RAHUL R.A. HARI
12 NEIL P. THAKOR
 Assistant United States Attorneys

13 Attorneys for Plaintiff
14 UNITED STATES OF AMERICA
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Maksim Zaitsev assaulted Deportation Officer I.R. by biting down and fracturing his finger. Though he has not specified his exact theory, defendant intends to claim that he acted in self-defense, thereby putting the burden on the government to show that the defendant reasonably believed the use of force was necessary and that he used no more force than appeared reasonably necessary under the circumstances.

At trial, the government seeks to introduce expert testimony from an orthopedic hand specialist, Dr. Steven Soohwan Shin, to testify on the severity of the victim's injuries and to rebut defendant's theory of self-defense. In April 2025, the government provided a summary of Dr. Shin's opinions, and then supplemented that notice specifying Dr. Shin's opinions in response to defendant's objections. The expert disclosures were timely because they did not violate any deadline, and the defense has a "fair opportunity" to respond to Dr. Shin's anticipated testimony. That being said, the government cannot anticipate all of the specific opinions necessary to rebut defendant's self-defense theory because defendant has not yet disclosed the basis of their theory to the government. As a result, the government still expects to continue to supplement its expert disclosures as more information on defendant's self-defense theory comes to light.

To the extent the Court believes the government has not met its expert disclosure obligations, there is no prejudice to the defendant. Nor has the defendant identified any. If defendant needs more time, the Court can simply continue the trial, as the last date

1 to bring defendant to trial without violating his right to a speedy
2 trial is July 3, 2025.

3 In short, the government has met its disclosure obligations in a
4 timely fashion, and even if it did not, excluding Dr. Shin's
5 testimony would not be the appropriate remedy here. Defendant's
6 motion should therefore be denied.

7 **II. ARGUMENT**

8 **A. The Government's Expert Disclosure Is Timely:**

9 The government's disclosure of Dr. Shin was timely and did not
10 violate any deadline imposed by any rule or order. The defendant
11 seeks to impose a strict 30-day rule for expert disclosures that does
12 not exist in the Federal Rules of Criminal Procedure, the current
13 Local Rules, or in any of the Court's orders. The court should
14 reject this unsupported bright-line rule.

15 The only rule governing the timeliness of expert disclosures
16 applicable to this case is Federal Rule of Criminal Procedure
17 16(a)(1)(G), which states, absent a local rule or court order (as in
18 this case) "the time [for expert disclosures] must be sufficiently
19 before trial to provide a fair opportunity for the defendant to meet
20 the government's evidence." Fed. R. Crim. P. 16(a)(1)(G). Here, the
21 government provided its initial notice that it intended to call Dr.
22 Shin 29-days before trial, and then supplemented its notice 21-days
23 before trial. (Dkt. 54-1, Initial Expert Disclosure; Ex. A,
24 Supplemental Expert Disclosure.) Courts have found such timing to be
25 sufficient under the rules. See e.g., United States v. Huerta-
26 Zuniga, No. 2:20-CR-00122-DCN, 2021 WL 2109188, at *4 (D. Idaho May
27 25, 2021) (government timely disclosed its expert witnesses twenty-
28 one days before trial.).

1 Defendant does not discuss at all why he would not have a "fair
2 opportunity" to meet the government's evidence. To the contrary, he
3 contends the "case is not complicated." (Mot. at 1.) Indeed, Dr.
4 Shin's testimony should not be surprising, as he will testify on the
5 victim's bodily injury, which the government is required to prove at
6 trial even if the defense does not dispute bodily injury. See United
7 States v. Kennedy, 643 F.3d 1251, 1257 (9th Cir. 2011) ("Kennedy's
8 offer to refrain from disputing whether the individuals in the images
9 were minors and real people is not equivalent to an affirmative
10 stipulation that they were, and so his offer did not relieve the
11 government of its burden of proving those facts beyond a reasonable
12 doubt."). Further, the extent of Dr. Shin's testimony depends, in
13 part, on the defendant's self-defense theory, the basis of which only
14 defendant knows and has yet to disclose.

15 Moreover, there is still nearly three weeks before trial to
16 address Dr. Shin's expert testimony. And even if defendant had
17 specified how he has not had a fair opportunity to meet the
18 government's evidence (he has not), the Court could always grant a
19 short continuance to July 3, 2025, which would not run afoul of
20 defendant's right to a Speedy Trial. Accordingly, there is more than
21 sufficient time for defendant to have fair opportunity to prepare for
22 the opinions from Dr. Shin.

23 **B. The Government Has Disclosed a Complete Statement of**
24 **Opinions from Dr. Shin Known At This Time**

25 As a threshold matter, the government's supplemental expert
26 disclosure addresses defendant's objection that the expert disclosure
27 did not contain a complete statement of opinions. (Ex. A,
28 Supplemental Disclosure.) The supplemental expert disclosure further

1 specifies Dr. Shin's opinions, including those based on the
2 information available to it on defendant's self-defense theory. This
3 includes an opinion that the severity of the fracture is considered
4 to be a Gustilo-Anderson Grade II open fracture and that the victim's
5 injury is not consistent with the victim's hand being in a closed
6 position at the time of the injury. (Ex. A.)

7 However, to be clear, the initial disclosure already satisfied
8 Rule 16's disclosure obligations. This point is illustrated by the
9 defendant's own citation to United States v. Cerna, No. CR 08-0730
10 WHA, 2010 WL 2347406 (N.D. Cal. June 8, 2010). In Cerna, the
11 defendant objected to a "one sentence summary" of proposed opinions
12 that were identical for four separate experts, which merely stated
13 the experts will testify to the "procedures" they performed in
14 conducting an examination of electronic devices. Id. at *3. The
15 Court rejected the defendant's challenges, along with its other
16 challenges to generic summaries of medical examiners and gunshot
17 residue experts, on the grounds that these generic summaries were
18 sufficient under the Advisory Committee Notes. Id. at *4. Although
19 the Court did find that some of the experts were insufficiently
20 disclosed, it allowed the government to "an opportunity to cure" the
21 disclosures, despite the stipulated deadline for expert disclosures
22 had lapsed 21 days prior. Id. at *5.

23 Here, to the extent the government's initial expert disclosure
24 was insufficient, the government has cured those issues. However, as
25 stated above, the government cannot anticipate every opinion it will
26 elicit from Dr. Shin because it does not know the basis or theory of
27 defendant's self-defense theory. Huerta-Zuniga, 2021 WL 2109188, at
28 *4 (D. Idaho May 25, 2021) (rejecting motion to exclude experts for

1 being untimely because "the timing problem about which Defendants
2 complain is, at least in part, due to the timing of their own
3 disclosure"). As a result, the Court should permit the government to
4 continue to supplement its disclosure as new information on
5 defendant's self-defense theory comes to light.

6 **C. Dr. Shin's Expert Testimony Is Relevant To Prove Bodily**
7 **Injury and to Rebut Defendant's Self-Defense Theory.**

8 Dr. Shin's anticipated testimony is probative on the issue of
9 bodily injury as well as self-defense, namely whether defendant used
10 more force than appeared reasonably necessary in the circumstances.
11 As a result, the severity of the victim's injury and testimony
12 regarding the victim's recovery are directly relevant to meet the
13 government's burden both to prove its case-in-chief and to prove that
14 defendant used more force than necessary. In addition, Dr. Shin's
15 testimony is relevant to rebut any notion the bite was caused by
16 strikes to the defendant's face as implied in Defendant's Opposition
17 to Motion in Limine #2. (Dkt. 47 at 2.)

18 Defendant has tried to eliminate this probative value of this
19 testimony by claiming that he will not dispute the element of bodily
20 injury. But that offer, even if it occurs, does not relieve the
21 government of its burden of proof at trial. See, e.g., Kennedy, 643
22 F.3d at 1257; United States v. Malone, 2024 WL 3579493, at *1 (9th
23 Cir. July 30, 2024) ("Even if Malone conceded the intent element in
24 his opening statement, there was no stipulation entered and the
25 Government had the burden to prove this element beyond a reasonable
26 doubt using "'evidence of its own choice'" (quoting Old Chief v.
27 United States, 519 U.S. 172, 186-87 (1997))). Indeed, this argument
28 deviates from the generally accepted rule that government may prove

1 its case as it sees fit, even in the face of the defense's
2 stipulation. Old Chief v. United States, 519 U.S. 172, 189, 117 S.
3 Ct. 644, 654, 136 L. Ed. 2d 574 (1997) ("accepted rule that the
4 prosecution is entitled to prove its case free from any defendant's
5 option to stipulate the evidence away rests on good sense.). The
6 government has a right to explain the severity of the injury caused
7 by the defendant's assault, and the jury should be permitted to
8 consider the severity, the long-term effects and health risks the
9 victim is now facing, to get a fulsome picture of the assault. Dr.
10 Shin's testimony will go directly to these issues and aid the jury in
11 understanding just how badly the defendant injured the victim.

12 **III. CONCLUSION**

13 For these reasons, the defendant's motion should be denied and
14 the Court should allow the government to elicit expert testimony from
15 Dr. Shin at trial.

16
17 Dated: April 30, 2025

Respectfully submitted,

18 BILAL A. ESSAYLI
19 United States Attorney

20 LINDSEY GREER DOTSON
21 Assistant United States Attorney
Chief, Criminal Division

22 /s/

23 RAHUL R.A. HARI
24 NEIL P. THAKOR
Assistant United States Attorneys

25 Attorneys for Plaintiff
26 UNITED STATES OF AMERICA
27
28